

REMARKS/ARGUMENTS

Claims 8, 9, and 23-36 are active. Support for Claims 23-36 is found in Claims 1-22 and the specification as originally filed. No new matter is believed to have been added by the addition of Claims 23-36.

The invention as claimed relates to a cosmetic preparation comprising a water-containing powder composition with aqueous gel cores made from a water-soluble gellant coated with hydrophobic particles and methods of applying a makeup, which contains the water-containing powder composition. These claims would not have been obvious in view of the cited publications because, very simply, the publications would not have been combined in the manner in which the Office has alleged. Further discussion on this point follows.

As noted by the Office in the Office Action, Reyes describes a process whereby hydrophilic polymers are encapsulated in hydrophobic material through a series of steps ending in the graft polymerization of the hydrophobic material to the hydrophilic material "To thereby trap the material to be encapsulated within the coating" (see FIG. 1 of Reyes). The purpose of making such microcapsules is to make a coated paper with the microcapsules containing "dye or other marking material reactive with the paper" upon "rupture of the wall of the capsule through impact or pressure of a typewriter key . . . The need for an external source of marking fluid is thereby eliminated." (col. 1, lines 29-38 of Reyes). Reyes goes on to characterize the problem being addressed, which is the leakage of previously known capsules in the paper making process (see col. 1, lines 51-70) and on this basis Reyes' invention is to permit the encapsulation of solvents useful in this paper marking/printing technology (see col. 1, line 71 to col. 2, line 2). As correctly noted by the Office, Reyes does not describe a cosmetic.

Deubzer describes preparing microcapsules with organopolysiloxane walls which is produced by hydrolysis and polycondensation (see col. 1, lines 43-49 of Deubzer). The

problem addressed by Deubzer is to more easily prepare these organopolysiloxane shells with cheaper materials (see col. 1, lines 36-39). Deubzer also describes at col. 6, lines 15-25 that “the microcapsules may be used for all applications in which microcapsules have also been used” and among the generic listing of applications, cosmetics is included.

The rejection is untenable because the combination of prior art provides no description or suggestion to make the modifications suggested by the Office. Rather, without using the Applicants’ claims as a guide, one would not have combined such different disclosures because each of Reyes and Deubzer teach completely different solutions to completely different problems and would not have been combined. For further guidance on this point, Applicants refer to MPEP § 2141.02: “PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS.”

Furthermore, the microcapsules of Reyes would not have been modified or combined with Deubzer because each specifically relates to the discovery of an optimized microparticle to achieve a desired way to deliver some material, such as printing solvents in Reyes and surfactants in Deubzer. Therefore, each of the disclosures is limited to their unique findings and provides no indication whatsoever that the disclosures would be applicable in other configurations as the one claimed in this application. This is further supported by the fact that Deubzer, which was filed in March 1999 (with an earlier German filing of March 1998), does not describe anything relating to the inclusion of microcapsules as described in Reyes notwithstanding the fact that the Reyes material was known since at least 1984, which is when Reyes issued.

Even assuming that one would have thought of trying to use the Reyes microcapsules in place of the Deubzer microcapsules, one would have been dissuaded from doing so because the Reyes microcapsules would not be suitable for cosmetic applications. In

particular, since Reyes describes a graft polymerized hydrophobic surface treatment, when the capsule is ruptured to release its contents, the polymerized material remains intact and would leave an unacceptable residue of broken capsules, for example, on the surface of the skin.

In view of the foregoing, Applicants request that the rejection based on the combination of Reyes and Deubzer be withdrawn.

Turning to the rejection, which adds Munteanu to Reyes and Deubzer, this rejection is also untenable because Munteanu does not add anything relating to the motivation to combine the Reyes and Deubzer. Munteanu describes the delivery of fragrances in microcapsules in cologne preparations. First, a cologne is not makeup as required in Claim 9 of the pending application. Second, once again Munteanu merely describes another type of microcapsule different and distinct from either of Reyes and Deubzer each relating to the discovery of an optimized microparticle to achieve a desired way to deliver the specific material described. There simply is no reason whatsoever that the disclosures would be combined absent the Office's hindsight reconstruction of the prior art because the prior art references themselves do not suggest the alleged combination that is the basis for these rejections. Accordingly, the rejection based on the combination of Reyes, Deubzer, and Munteanu must also be withdrawn.

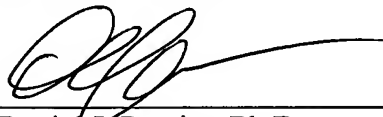
Application No. 10/049,623  
Reply to Office Action of April 8, 2005

Finally, Applicants request a Notice of Allowance.

Respectfully submitted,

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